**Reliable Tool & Machine Company, Inc. *and* Local Lodge 1541 of District Lodge 113 of the International Association of Machinists and Aerospace Workers, AFL-CIO.** Case 25-CA-13926

21 October 1983

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 13 August 1982 Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed copies of his briefs to the judge.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent bargained in bad faith, in violation of Section 8(a)(5), when during an economic strike it withdrew its prestrike package of proposals and substituted a new package, some of the provisions of which were less favorable to the Union than withdrawn proposals on which the parties had reached agreement. We are persuaded that, in the circumstances presented here, that finding is in error.

Early in the contract negotiations the parties agreed that all agreements on individual provisions would be tentative and nonbinding until a complete agreement had been reached. As the judge recognized, the withdrawal of individual proposals previously agreed to does not constitute a per se violation of a party's duty to bargain, although it properly may be considered in determining whether that party's total pattern of bargaining conduct warrants the conclusion that it is seeking to avoid rather than to reach an agreement. *Central Missouri Electric Cooperative*, 222 NLRB 1037, 1042 (1976). Here, the parties' express sanctioning of the nonbinding nature of agreements on individual items makes particularly appropriate the application of that principle. The judge found, however, that the Respondent engaged in bad-faith bargaining because, in his estimation, the substituted package was, overall, "substantially more unfavorable to the Union" than the previous package.

The particular items on which the Respondent is said to have regressed in its later proposal involve recognition of the Union in future plants, the time allowed for filing grievances, union security, seniority, insurance benefits, and pensions.[1] At the same time, the new package included the option of an additional 5-cent-per-hour wage increase or an additional holiday, plus an additional day of paid vacation, increases in major medical and disability benefits, lengthening the rest period, and unconditionally granting a wage premium for the third shift.

At the time the Respondent made its new proposal package, negotiations had been at a standstill for over 2 months because of a temporary impasse over the location for bargaining sessions during the strike, the Union not wishing to "cross its picket line" to meet with Respondent within the plant.[2] Respondent, therefore, did not "sidetrack" a forward-moving process by introducing new elements into the negotiations. It would appear from this standpoint that, rather, a fresh proposal was at least as likely to propel negotiations forward as to delay them. The proposals themselves, although found by the judge to be, taken together, substantially more unfavorable to the Union than the positions taken by the Respondent previously, are not so "harsh, vindictive, or otherwise unreasonable" that they warrant the presumption that they were proffered in bad faith. See *Chevron Chemical Company*, 261 NLRB 44, 46 (1982). Whether, balancing the additional concessions against the "takeaways," the whole package was more or less favorable than the previous package is, in fact, debatable.[3] Arguably, there might be circumstances under which the withdrawal of proposals agreed upon, and the insistence on provisions similar to those proposed by Respondent here, would evidence an intention not

[1] As set forth more fully in the attached judge's decision, the later package affected these matters as follows:

1. The Respondent withdrew its agreement that recognition of the Union would extend to future plants in Noble County, Indiana. It continued to recognize the Union in its two existing plants.

2. After agreeing that certain grievances would be timely if filed within 2 working days, Respondent reverted to its position that the time limit be 48 hours.

3. The Respondent first agreed to an agency-shop union-security provision but then proposed an open shop.

4. On recall from layoffs, Respondent first agreed to strict seniority, but later proposed the addition, "provided that they have the required skills and ability to perform the work available." Agreement on notification at least 2 working days in advance of layoff and on superseniority for union stewards, officers, and committeemen was withdrawn.

5. The Respondent proposed withdrawal of maternity benefits from the existing and agreed-upon insurance package.

6. The later package proposed withdrawal from the union pension plan and establishment of "another retirement plan."

[2] There is no exception to the judge's finding that the Respondent acted lawfully when it "insisted" during the early months of the strike that negotiations, when resumed, should continue to be held at its offices within the struck plant.

[3] To the extent that the Respondent sought to capitalize on its ability to weather the strike by seeking terms more favorable to itself, its conduct was, in any event, lawful. *Hickinbotham Bros., Ltd.*, 254 NLRB 76, 102-103 (1981); *O'Malley Lumber Co.*, 234 NLRB 1171, 1179-80 (1978).

to reach an agreement. Here, however, the Respondent merely made new proposals for the Union's consideration. The Union refrained from continuing negotiations over the subjects on which it claims the Respondent regressed in its new package, preferring instead to resolve the legitimacy of the Respondent's bargaining conduct by litigating the instant proceeding. Since we find that the withdrawal and substitution of proposals were not unlawful, we shall dismiss the complaint.[4]

## ORDER

The complaint is dismissed.

[4] We note also that the Respondent's conduct reveals neither an intention to undermine the parties' longstanding bargaining relationship nor an adamant refusal to reach compromises.

## DECISION

### STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge: On September 18, 1981, Local Lodge 1541 of District Lodge 113 of the International Association of Machinists and Aerospace Workers, AFL-CIO (the Union), filed a charge against Reliable Tool & Machine Company, Inc. (Respondent). The complaint issued on November 20, 1981, alleging that Respondent has failed and refused and is failing and refusing to bargain collectively in good faith with the Union in violation of the Act. A hearing was held before me on these matters at Fort Wayne, Indiana, on April 18 through 21, 1982. Briefs were received from the General Counsel and Respondent.

### FINDINGS AND CONCLUSIONS

#### I. THE BUSINESS OF RESPONDENT

Respondent maintains its principal office and place of business at Kendallville, Indiana, where it engages in the manufacture, sale, and distribution of automotive parts and related products. During the 12-month period ending August 31, 1981, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000, and sold and shipped from its facilities products, goods, and materials valued in excess of $50,000 directly to points outside the State of Indiana. I find that Respondent is an employer within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this case.

#### II. THE LABOR ORGANIZATION INVOLVED

Local Lodge 1541 of District Lodge 113 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor union within the meaning of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

In 1963 and prior thereto Respondent was engaged in manufacturing operations in Kendallville, Indiana. In 1963 the Company recognized the Union as the representative of production and maintenance employees of the Company and a contract was negotiated between the Company and the Union in that year. All of the 1963 contract negotiations were conducted by Harvey Charles who was then the president of the Company. Harvey Charles' son, Arthur Charles, participated in all of the 1963 negotiation meetings as an adviser and all of the meetings were held in the office of the president of the Company. At the time of the 1963 negotiations, the Company had only one plant and the president's office was located in that plant, known as the South Main Street Plant. There were approximately 10 or 11 meetings.

The contract negotiations were held again in 1966 and all negotiation meetings were conducted for Respondent by Harvey Charles in his office at the South Main Street Plant. Arthur Charles was again present at all negotiation meetings as an adviser.

The 1969 contract negotiations were conducted for the Company by Harvey Charles and all meetings were held in his office at the South Main Street Plant. Arthur Charles was present at all the negotiation meetings. The 1969 negotiation meetings did not result in a contract being agreed upon prior to the expiration of the previous contract and a strike started on June 27, and ended on September 29.

During the period of the 1969 strike there were four contract negotiation meetings while the Union was picketing. These four meetings were held in the office of the president of the Company and Respondent contends that union officials crossed the picket line to attend the meetings. The Union contends that during this strike the picket lines were withdrawn during the negotiating sessions so that its officials did not have to cross the picket line.

The next contract negotiations were in 1972 and Arthur Charles had become president of the Company. All of the negotiation meetings in 1972 were again held in the office of the president at the South Main Street Plant. Arthur Charles conducted all the meetings as the chief company representative.

In 1978 there were again contract negotiations and all the meetings were held on company premises in the office of President Arthur Charles. By this time the Company had built a new building on West Ohio Street and the office of the president was then located in that building. Arthur Charles presided as chief company spokesman at all the meetings.

The current contract negotiations began in 1981. All the meetings prior to the expiration of the contract on June 27 were held in the office of the president, Arthur Charles, at the West Ohio Street Plant. Charles presided over the meetings as chief company spokesman. The first negotiating meeting was held on May 19, and was devoted to the Union's presentation of its proposal of a new contract draft.

The second 1981 negotiating meeting was held on May 28. At this meeting the Company commented on various union proposals and the Company presented its written proposed contract draft.

Subsequent meetings were held on June 16, 17, 18, 19, 22, 24, and 25. At these meetings there was extensive discussion of various proposals and counterproposals by both parties and tentative agreement on several specific contract articles was reached. However, no agreement was reached on the total contract and the parties reached an impasse on June 25. Details as to the portions of the contract for which tentative agreement had been reached will be given, as pertinent, at a later point in this decision. On June 27, the Union began a strike which continues to this day.

During the period from June 27 to November 3, a Federal mediator was utilized to try to end the impasse. Early in July, Arthur Charles received a contact from the mediator concerning the holding of a bargaining session. The testimony of the mediator is not of record and what he relayed between the parties of necessity must be gathered from the parties' representations of what he said. The only significant disparity in the parties' understanding in this period relates to the site of a proposed meeting between the Union and Respondent. Charles testified that the mediator asked whether he would meet with the Union and Charles replied that he would meet with the Union at any time it wanted. Charles testified that the mediator then asked where the meeting should be held and Charles said that it should be held at the company offices where they had always been held. The mediator expressed the view that the Union would not cross its picket line.

The mediator made subsequent contact with Charles, who continued to express the view that the meeting should be held where it had always been held, in the company offices. Charles contends that the mediator never, during this period of time, suggested a specific alternate location for a meeting. The Union refused to cross its picket line as it is a violation of its International constitution to do so and subjects the members crossing the picket line to a variety of penalties. The General Counsel, on brief, contends that the Union did suggest alternate locations; however, I can find no clear support for this contention in the record. There is certainly no evidence that the mediator actually suggested an alternate meeting site.

The stalemate over a meeting place continued through the summer until around the middle of October when Charles initiated a suggestion to the mediator that the parties meet alternately on company premises and off company premises. The arrangement proposed by Charles was satisfactory to the Union and subsequent meetings were held beginning on November 11.

Previously, on September 4, the Company wrote a letter to the Union advising of the withdrawal of the Company's existing proposal and stating that the Company was working on a new proposal which would be submitted to the Union in the near future. On September 15, the Company had completed a rewrite of its proposed contract-draft and on that date the new proposal was delivered to the Union by the mediator.

After delivery of the new proposal to the Union, the mediator returned to the Company and advised Charles that the Union did not like the proposal they had received. He stated that the Union was going to take the proposal to the membership, which was done. Thereafter, no contact was made between the Company and the Union until November 3, when the Union sent a letter to the Company requesting a meeting to negotiate over the Company's September 15 proposal. Arthur Charles then suggested alternate meeting sites and meetings were set up to begin in November.

The first such meeting was held on November 11. At the start of the meeting, Charles introduced Raymond Nelson, a labor consultant, and Bill Lear as the new company representatives at the bargaining meetings. There were no agreements arrived at during the November 11 meeting and subsequent meetings were held on November 24, December 4, 7, and 11, 1981, and January 11, 1982. No agreement was reached between the parties and there have been no meetings since January 11, 1982.

Under the facts and the pleadings, there were four issues presented in this proceeding. First, has Respondent refused to bargain in good faith since July 6, 1981, by refusing to meet with the Union except at its offices until November 11, 1981? Second, did Respondent, on September 4, 1981, withdraw its package of proposals for the purpose of avoiding its obligation to bargain in good faith with the Union? Third, did Respondent refuse to bargain in good faith by submitting to the Union unreasonable contract proposals on September 15, 1981? Fourth, was the Union's economic strike of June 27, 1981, converted to an unfair labor practice strike by Respondent's actions in insisting that the parties engage in negotiations at the Company's facilities or by its subsequent actions.

### A. *Issue of Whether Respondent Refused to Bargain in Good Faith by Insisting on Meeting at Its Offices Between July 6 and November 11, 1981*

As noted above, Respondent's president, Arthur Charles, insisted, through the Federal mediator, that although the Company was willing to meet at any time with the Union, such meetings must take place in the company offices which were behind the Union's picket line. The fact that the Union would not cross its own picket line was relayed about July 6, 1981, to Charles by the Federal mediator. There is a dispute in this record, as reflected in the briefs, as to whether the Union suggested any alternate meeting sites at any time. Charles contends that they did not. The Union's representative, Bruce Putman, in an incomplete answer, indicated that, at some unspecified time, alternate sites were suggested to the mediator. What the mediator relayed to the Company on this point is not of evidence. I credit Charles' testimony that no specific alternate sites were suggested.

The employer has a duty to meet at reasonable times and places with the union in order to bargain. The question is whether or not the Company's insistence on meeting at its offices was reasonable or unreasonable under the circumstances.

After the breakdown in negotiations between the parties in June, it does not appear from the evidence that either side was particularly insistent on resuming negotiations. In the time frame between the institution of the strike and the withdrawal of the Company's existing pro-

posals on September 4, the evidence reflects very little concern by either side about the fact that negotiations were not taking place. It may well be that both parties were waiting during this period to see what effect the strike might have.

Under these circumstances, I cannot find that the Company's insistence on resuming negotiations at its offices was unreasonable. All negotiations since recognition of the Union in the early 1960's had been held at the company offices, even during a previous strike. Although I agree that the Union did not have an obligation to cross its own picket line, in actual practice it had either crossed its picket line in the earlier strike or had withdrawn its pickets during the times at which negotiation sessions were held at the company offices. The company offices had proven to be a satisfactory meeting place to both the Union and the Company in all previous negotiations and I cannot find that specific alternate sites were relayed to Respondent by the Union in this time frame. Because of the past practices of the Union and Respondent, including bargaining sessions at the company offices during a previous strike, I find that the Company's insistence on meeting at its office during the period between July 6 and September 15, 1981, in and of itself, does not constitute a refusal to bargain in good faith.

### B. *Did Respondent's Withdrawal of Outstanding Proposals on September 4, by Itself or Combined with Its Proposals of September 15, Constitute Refusal to Bargain in Good Faith*

As noted earlier, by Respondent's letter of September 4, 1981, it withdrew all of the tentatively agreed-upon articles of the contract. There had been agreement on many of the sections of the 25 involved articles, although clearly disagreement existed as to several of the more important articles. Although the General Counsel urges that the mere withdrawal of the agreed-upon proposals on September 4 in and of itself constitutes an unfair labor practice, it is difficult to reach a decision on this point until one views the Company's subsequent actions. The Company did not simply withdraw its proposals and sit tight until the Union filed a charge alleging refusal to bargain. Rather, its September 4 letter indicated that new proposals were being formulated by the Company which would be shortly forwarded to the Union in order to resume negotiations. What the Company offered in the way of new proposals appears to me to be the key to determining whether it was continuing to bargain in good faith on and after September 4, or whether the Company intended to avoid its obligation to bargain.

The new proposal which the Respondent submitted to the Union through the Federal mediator on September 15 was a complete contract-draft which incorporated many of the matters which had been agreed to between the parties prior to the impasse on June 25, but also included new proposals with some more favorable to the Union and some proposals less favorable than the Company's last position in June.

The proposals included six items on which the Company's September 15 proposals represented a plus for the Union. These items were the following:

1. An option of an additional 5-cent-per-hour wage increase (having the effect of making the initial increase to 55 cents) or an additional holiday.
2. An additional day added to the vacation period.
3. Raising the major medical insurance maximum from $250,000 to $500,000.
4. Increasing the weekly insurance sickness and accident benefit from $80 to $90 effective the first year of the agreement.
5. Increased the previously agreed ten minute rest period to fifteen.
6. Removed contingency placed upon the increase to 30 cents in third shift premium.

On the other hand, the Company proposed the following changes which must be considered less favorable to the Union than its position when negotiations broke off on June 25:

1. With respect to recognition, the Company had agreed as of June 1981 that recognition applied to all plant employees of Respondent in Noble County, Indiana (the two plants at Kendallville, Indiana and any future plants in Noble County, Indiana). The September proposal would limit recognition to the two existing plants in Kendallville, Indiana.
2. Under the contract article dealing with management, after considerable give and take, the Company and the Union had agreed as of June 1981 to accept the wording of the previously existing article which, *inter alia*, allowed two working days for employees to file complaints against management. The September proposal withdrew this agreement and substituted an earlier proposal that the time frame be 48 hours. The Union believes that the two working days wording protects employees against the running of weekends against employees in their right to file a complaint.
3. With respect to union security and representation, after negotiation over various changes, the parties had agreed in June that there would be no change in the previous contract which called for an agency shop. The September proposal by Respondent changed this agreement and proposed an open shop, a proposal that is totally unacceptable to the Union.
4. The September 15 proposal changed Section IV of Article 4 (seniority) by adding a provision which stated, "that employees have required skills and the ability to perform available work"; deleted the previously agreed to Section V (Superseniority for Union officers, shop stewards, and union committeemen); and withdrew the agreed to language of the old Section VII and substituted more onerous language.
5. The September proposal provided for some improvements in the insurance package but called for the removal of maternity benefits that had been covered in the old agreement.

6. Under the old agreement in the portion dealing with pensions, which had six sections, the Respondent contributed to the Union's pension program. In its 1981 proposals the Union sought the same agreement but with increased contributions by the employer. The employer sought no changes in the existing contract. Under the union pension plan [it] proposed to establish a company pension plan, the terms of which would be subject to bargaining.

The Union urges that it also reached an agreement as of June 1981, whereby there would not be mandatory overtime. Its representatives claim that, as part of a package trade-off at the next-to-last negotiation session, Respondent indicated that it would drop its proposed mandatory overtime proposal. Arthur Charles hotly disputed this. I believe that the Union is mistaken in its belief that an agreement was reached on this issue. There is nothing in writing to indicate that an agreement was reached and Charles showed no hesitation at the hearing to agree that Respondent had changed its position on a number of previously agreed-to contract provisions. There is nothing so special about mandatory overtime that would lead me to find that an agreement had been reached and Charles was trying to hide the fact. I credit Charles' testimony and position in this regard.

In addition to the foregoing, Respondent's September proposal also made some changes which were neither more nor less favorable to the Union on certain articles about which no agreement had been made and did not change its position on other unagreed-upon articles.

Comparing the Company's position as of June 25 with the new proposals, one can only conclude that the September proposal is substantially more unfavorable to the Union than the June 25 agreement.

Two of the September company proposals, that of offering an open shop to the Union after agreeing to an agency shop by June 25, and the proposal to remove the existing pension plan and replace it with an unknown one after agreement to the Union's pension plan, are by themselves so unfavorable to the Union that it has to cast serious doubt on the Company's desire to resume and conclude bargaining to an agreement. The General Counsel also asserts that the proposed mandatory overtime provision in the September proposal is a harsh reversal of Respondent's earlier agreement on overtime. However, since the fact of the agreement is in dispute and I find from the evidence that the Company had not agreed, as of June 25, to noncompulsory overtime, I do not find that this is a change in its previous position.

Respondent urges that the aspects of its September proposal which are negative to the Union are either reasonable offsets to the proposed positive items or reflect its perceived improved bargaining position as it had weathered the strike without much problem. In support of its position that it is serious about bargaining in good faith, albeit from a superior position, Respondent points out that it initiated the new proposals, urged meetings for negotiations on the proposals, and suggested, through the mediator, alternate meeting sites. On the surface this appears to be a reasonable position.

However, in my opinion, the September proposals go far beyond merely asserting a perceived improved bargaining position seeking concession or reasserting positions originally urged by it in the initial bargaining sessions. Primarily, the change of position from agreement on an agency shop to a demand for an open shop and a totally new demand to pull out of the existing pension plan and bargain for a new one are real barriers raised by Respondent to thwart successful negotiations. The two proposals are more indicative of an intention to cease recognizing the Union as a bargaining agent rather than serious proposals over which the Company intends to bargain. I find it significant in this regard that in the bargaining sessions that took place in the fall and early winter of 1981-1982 the Company offered no movement whatsoever on these items.

Consequently, though I agree with Respondent that it has a lawful right in the circumstances to withdraw what was then on the table as of September 4, and substitute a new proposal to attempt to resume meaningful negotiations, I find it has gone too far in the harshness of its proposals. I find that the new proposals were so unacceptable to the Union on the surface as to reflect a conscious intent on the part of Respondent to completely stymie meaningful negotiations. Accordingly, I find that Respondent is now, and has been since its withdrawal of all theretofore agreed-to articles of the proposed contract, refusing to bargain in good faith, in violation of Section 8(a)(5) of the Act. See *Randle-Eastern Ambulance Service*, 230 NLRB 542 (1977); *Walker Die Casting, Inc.*, 255 NLRB 212 (1981).

Respondent relies on the recent case of *Hickinbotham Bros. Ltd.*, 254 NLRB 96 (1981), in support of its proposition that its actions should not constitute an unfair labor practice. As pointed out by Respondent, the facts and issues in *Hickinbotham* are similar to those of the present case and, indeed, it appears that some of management's actions in the instant case were taken with *Hickinbotham* in mind. In *Hickinbotham*, the employer and the union agreed, at the onset of negotiations, that all agreements on individual provisions would be tentative until an entire collective-bargaining agreement was reached, a situation similar to that involved herein. During the initial negotiations in *Hickinbotham*, some issues were resolved. However, no agreement was reached on issues of seniority, job bidding, and the employer's proposal to change from the Teamsters pension plan to its own plan. After several bargaining sessions, the employer put its best offer in writing, but it was rejected by the union membership which voted to strike. During the strike, the employer achieved nearly full production by hiring replacements and using supervisory employees. At the first meeting after the strike began, the parties agreed that they had reached an impasse and a Federal mediator was appointed to conduct further meetings. At subsequent meetings the employer withdrew its earlier proposals and submitted new proposals less favorable to the union on a number of issues. In particular, the employer reverted to its original proposal concerning an open-shop provision and remained firm on other issues despite signs of movement by the union. The union filed an 8(a)(5) charge al-

leging that the employer had withdrawn earlier proposals in bad faith and he made regressive, onerous proposals as an alternative. The Board approved the administrative law judge's decision dismissing the complaint in its entirety. In *Hickinbotham*, the administrative law judge noted that the newly stated proposals of the employer were reasonably tenable positions and that such withdrawals of earlier proposals followed by offering of new, albeit harsher alternatives, is lawful where

> . . . in addition to the flexing of its economic muscle, Respondent had specific reasons for its reversion to an earlier proposal, some of which are directly attributable to circumstances changed by the strike such as the replacement's expressed desire not to have to join a union and a savings realized by subcontracting certain processes which had never been subcontracted before. Other reasons were the same as those advanced when the provisions were initially proposed. It is immaterial whether the Union, the General Counsel, or I find these reasons totally persuasive. What is important, and I so find, is that these reasons are not so illogical as to warrant an inference that by reverting to these proposals Respondent has evinced an intent not to reach agreement and to produce a stalemate in order to frustrate bargaining [254 at 102–103].

The difference between the instant situation and that presented in *Hickinbotham* is that the employer in *Hickinbotham* had detailed and logical reasons for its original proposals and its later proposals even though they were unfavorable to the Union. For example, it proposed to take the bargaining unit employees out of the Teamsters pension plan and place them under an existing pension plan which it had in operation in its other plants for many years. It had done a study of the Teamsters plan and found that it was not financially sound. There is no showing in the instant case that the Employer had made a serious investigation of the soundness of the involved Union's pension plan nor did it offer evidence as to the soundness and successful operation of whatever pension plan it had in mind when it made its September 15 proposal. Similarly, the employer in *Hickinbotham* wanted to change to an open-shop situation since many of the strike replacements, who would remain as permanent employees, had requested that they be nonunion. There is no evidence in this case that any such similar request had been made by those strike replacements who may expect to stay on as permanent employees.

In conclusion, I find that although the Employer in this case attempted to track the actions approved in *Hickinbotham*, the harsh new September proposals, unlike the employer's proposals in *Hickinbotham*, are not supported by logical reasons and appear designed only to thwart negotiation and undermine the Union.

### C. *Has the Respondent's Refusal to Bargain in Good Faith Converted the Union's Economic Strike into an Unfair Labor Practice Strike*

Although I do not agree with the position of the General Counsel that Respondent's initial insistence after the strike began upon meeting with the Union at its office constitutes an unfair labor practice, thereby converting the strike in progress into an unfair labor practice strike, I find that its actions of September 4, 1981, and thereafter had this effect. See *Randle-Eastern Ambulance, Inc.*, supra. I find that the Company's letter of September 4, 1981, was the first step in what has turned out to be a series of steps to frustrate negotiations. Thus, I find that the Union's economic strike was converted to an unfair labor strike on September 4, 1981, and Respondent is obligated to reinstate strikers replaced after September 4, 1981, on their request, even if Respondent has to discharge strike replacements to accomplish this goal.

On the basis of the above findings of fact and the entire record in this case, I make the following

## CONCLUSIONS OF LAW

1. The Respondent, Reliable Tool & Machine Company, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Local Lodge 1541 of District Lodge 113 of the International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By refusing to bargain collectively and in good faith with the Union after September 4, 1981, Respondent has engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(1) and (5) of the Act.
4. The strike among Respondent's employees which commenced on June 27, 1981, was converted to an unfair labor practice strike by Respondent's unfair labor practices on September 4, 1981.
5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom and from any like or related manner of infringing upon its employees' Section 7 rights and to take certain affirmative actions designed to effectuate the policies of the Act.

I have found that Respondent unlawfully refused to bargain with the Union which has been the certified and contractual representative of its employees for a number of years. I shall therefore recommend that it be ordered to bargain collectively with the Union, on request, concerning rates of pay, wages, hours, and other terms and conditions reached.

I have also found that an economic strike was prolonged and converted into an unfair labor practice strike on September 4, 1981, by Respondent's conduct in violation of the Act. I shall therefore recommend that Respondent be ordered to offer, on application, to all striking employees who were not permanently replaced while economic strikers, reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, discharging, if necessary, any re-

placements hired on or after September 4, 1981, and to make each of these striking employees whole for any loss of earnings they may have suffered by reasons of Respondent's failure, if any, to reinstate them within 5 days after the date on which they apply for reinstatement to the date of Respondent's offer of reinstatement, by payment to each of them of a sum of money equal to the amount they would normally have earned during said period, less net earnings, if any, during said period, plus interest, to be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950); *Florida Steel Corp.*, 231 NLRB 651 (1977); and *Isis Plumbing Co.*, 138 NLRB 716 (1962).

[Recommended Order omitted from publication.]